SDR

303 NLRB No. 164

D--1919
Beckley, WV

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

ROSE EAGLE COAL COMPANY, INC.

and

Case 9--CA--28232

UNITED MINE WORKERS OF AMERICA,
DISTRICT 17

August 9, 1991

DECISION AND ORDER

By Chairman Stephens and Members Devaney and Raudabaugh

Upon a charge filed by United Mine Workers of America, District 17, the Union, on January 25, 1991, the General Counsel of the National Labor Relations Board issued a complaint on March 7, 1991, against Rose Eagle Coal Company, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On June 10, 1991, the General Counsel filed a Motion for Summary Judgment against the Respondent, with exhibits attached. On June 13, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, ''all of the allegations in the complaint shall be deemed to be admitted to be true and shall be so found by the Board.'' Further, the undisputed allegations in the Motion for Summary Judgment disclose that counsel for the General Counsel, by letter dated May 22, 1991, notified the Respondent that unless an answer was received by close of business June 3, 1991, a Motion for Summary Judgment would be filed. The Respondent has not filed an answer to date nor requested an extension of time in which to file an answer.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

Findings of Fact

I. Jurisdiction

The Respondent, a corporation, with an office and place of business in Beckley, West Virginia, has been engaged in the mining of coal. During the 12 months preceding the issuance of the complaint, a representative period, the Respondent, in the course and conduct of its business operations, provided services valued in excess of $50,000 for Peabody Coal Company, a nonretail enterprise within the State of West Virginia which, in turn, annually sells and ships from its West Virginia facilities goods and products valued in excess of $50,000 directly to points outside the State of West Virginia. We find that the Respondent is an employer engaged in commerce within the meaning

of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

A. The Unit

The employees of the Respondent described in the National Bituminous Coal Wage Agreement of 1988 constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

B. The Refusal to Bargain

Since May 1989, and at all times material, the Union has been the designated exclusive collective-bargaining representative of the employees in the unit under Section 9(a) of the Act, and since such date, the Union has been recognized as such representative by the Respondent. Such recognition has been embodied in a collective-bargaining agreement between the Respondent and the United Mine Workers International Union on behalf of its affiliated locals and districts, including the Union, effective by its terms for the period February 1, 1988, through February 1, 1992.

Commencing about July 25, 1990, and continuing, the Respondent, without prior notice to and bargaining with the Union and without the Union's agreement, failed to continue in full force and effect all the terms and conditions of the existing collective-bargaining agreement by failing to provide medical insurance coverage for its employees and refusing to pay outstanding medical bills as required by the collective-bargaining agreement. We find that the Respondent, by this conduct, has been engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

Conclusions of Law

By failing and refusing to continue in full force and effect all the terms and conditions of its collective-bargaining agreement with the Union, which is effective by its terms from February 1, 1988, through February 1, 1992, by failing to provide medical insurance coverage for its employees and refusing to pay outstanding medical bills, commencing about July 25, 1990, and continuing, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Accordingly, we shall order the Respondent to provide the medical insurance coverage for its employees and to pay any outstanding medical bills that have become due pursuant to the terms of its collective-bargaining agreement with the Union, commencing about July 25, 1990, and continuing, with interest and other sums applicable.[1]

We shall also order the Respondent to make its employees whole for any losses they may have suffered as a result of the Respondent's failure to provide the contractually required medical insurance coverage in the manner prescribed in Kraft Plumbing & Heating, 252 NLRB 891 fn. 2 (1980), enfd. mem.

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[1] Because the provisions of employee benefit fund agreements are variable and complex the Board does not provide at the adjudicatory stage of the proceeding for the addition of interest at a fixed rate on unlawfully withheld fund payments. Any additional amounts owed with respect to the medical insurance fund will be determined in accordance with the procedure set forth in Merryweather Optical Co., 240 NLRB 1213, 1216 fn. 7 (1979).

661 F.2d 940 (9th Cir. 1981). This shall include reimbursing employees for any contributions they themselves may have made, with interest, for the maintenance of any medical insurance benefits after the Respondent ceased making the benefit payments. Concord Metal, 295 NLRB No. 94, slip op. at 8--9 (June 30, 1989). Interest on any money due and owing employees shall be computed in the manner prescribed in New Horizons for the Retarded, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Rose Eagle Coal Company, Inc., Beckley, West Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain with United Mine Workers of America, District 17, as the exclusive bargaining representative of the employees in the bargaining unit by failing and refusing from about July 25, 1990, and continuing, to provide the medical insurance coverage for its employees and to pay any outstanding medical bills as required by the collective-bargaining agreement.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Provide the medical insurance coverage for its employees and pay any outstanding medical bills that have become due under the collective-bargaining agreement from about July 25, 1990, and continuing, with interest, as set forth in the remedy section of this Decision and Order.

(b) Make whole unit employees for any losses they may have suffered because of the Respondent's failure to provide the medical insurance coverage and to pay outstanding medical bills that have become due under the collective-bargaining agreement, with interest, as set forth in the remedy section of this Decision and Order.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of money due under the terms of this Order.

(d) Post at its facility in Beckley, West Virginia, copies of the attached notice marked ''Appendix.''[2] Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

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[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'' shall read ''POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. August 9, 1991

James M. Stephens, Chairman

Dennis M. Devaney, Member

John N. Raudabaugh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with the United Mine Workers of America, District 17, as the exclusive representative of the employees in the bargaining unit by failing and refusing from about July 25, 1990, and continuing, to provide the medical insurance coverage for our employees and to pay any outstanding medical bills as required by the collective-bargaining agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL provide the medical insurance coverage and pay any outstanding medical bills that have become due under the collective-bargaining agreement from about July 25, 1990, and continuing, with interest.

WE WILL make you whole, with interest, for any losses to you resulting from our failure to provide the medical insurance coverage and to pay outstanding medical bills, as required by the collective-bargaining agreement, from about July 25, 1990, and continuing.

ROSE EAGLE COAL COMPANY, INC.

(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 550 Main Street, Room 3003, Cincinnati, Ohio 45202-3271, Telephone 513--684--3663.